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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 706

CHESTER RUDNICKI,
APPELLANT,

v.

GILBERT W. COX *et al.*,
APPELLEE.

CHESTER RUDNICKI,
APPELLANT,

v.

WILLIAM A. BROCKETT *et al.*,
APPELLEE.

JURISDICTIONAL STATEMENT

CHESTER RUDNICKI
102 Prospect Street
Somerville 43, Massachusetts
Pro se for Appellant

Blanchard Printing Company, Boston, Mass. — Law Printers

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Citations of Cases

Siegel v. *Ragan*, D.C. Ill. 1949, 88 F. Supp. 996, affirmed 180 F.2d 785, certiorari denied 70 S. Ct. 1015	7

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JURISDICTIONAL STATEMENT

Appellant, Chester Rudnicki, appeals from the decisions of the United States District Court for Mass., entered on October 15, 1962, in both cases, the Order of Dismissal in

favor of Gilbert W. Cox et al and William A. Brockett et al, the appellees. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented. The Order of Dismissal was dated 1st day of October, 1962, and was filed in Court 2 weeks later.

A copy of the Order of Dismissal is appended in Appendix "A", and having reference to both cases.

First Case

Federal Judge Anthony Julian has heard the plaintiff's Motion for Judgment by Default on March 20, 1961. This was taken under advisement and is still in effect. The defendants on April 3, 1961, filed a motion to extend time to file motion to dismiss late, Judge Julian had never taken any action on this defendant's request. Federal Judge Gignoux sitting by designation has allowed Order of Dismissal and also to extend time for filing Motion to Dismiss Late waiving the provisions of Rules of Civil Procedure Rule 12(a). Appendix "B"; Form 1, Federal Summons, Appendix "C"; Rule 55(a) and (b)2; Rule 54(c) and (d). This action was brought under U.S.C. 42, Chapter 21, section 1983 and 1985, Civil Rights Act, Appendix "D". The other defendants in this case are U. S. Government Officers.

Second Case

The Federal Judge Day was assigned to this case by designation. This judge took no actions on appellant's requests and motions for period of one year. Judge Gignoux was assigned by designation and has waived all of the plaintiff's requests and Motion for Judgment by Default under Federal Rules of Civil Procedure Rule 54(c). Judge Gignoux allowed a Order of Dismissal, Appendix "A", to

be put into effect and waived the provisions of the following laws; U.S.C. 42, Chapter 21, Sections 1983 and 1985; Rule 33 -7(a) and (c); Rule 33 and Rule 54(c); Form 1 Federal Summons, (Appendix "C"); all from Federal Rules of Civil Procedure.

To protect the violations of Federal Statutes and Federal Rules of Civil Procedure and the named defendants, the Judge Gignoux with approval of Assistant U.S. Attorney John J. Curtin, Jr., the counsel for defendants in both cases, allowed a Permanent Injunction to be put into effect illegally, Appendix "E".

Opinion Below

No opinion was filed by U.S. District Court for Mass. in both mentioned cases.

Jurisdiction

Appellant, Chester Rudnicki, brought suit against Appellees Gilbert W. Cox et al Case No. 1, and William A. Brockett et al Case No. 2, Federal and State employees and Officers in the U.S. District Court for Mass., under U.S.C. 42, Chapter 21, Sections 1983 and 1985, Civil Rights Act. The defendants in Case No. 1, have failed to respond to the complaint as is required by the provisions of Federal Summons and Federal Rules of Civil Procedure Rule 7(a) and (c). These defendants requested Judge Gignoux to grant extension of time in violation of Federal Rules of Civil Procedure Rule 12(a).

The defendants are in complete default as it appears on Court Docket Entry. Appellant brought motion for Judgment by Default under Rule 55(a) and (b) of Federal Rules of Civil Procedure and Demand for Judgment under Rule 54(c), this was denied by Judge Gignoux.

In the Case No. 2, the defendants have raised objections of answering the appellant's propounded interrogatories under Federal Civil Procedure Rule 33. This was never disposed of and no default has been filed against the defendants. The defendants have filed a Motion to Dismiss in substitute to required answer, in abolished form of Demurrer. Appellant has filed his motion for Judgment by Default under Rule 54(c) Federal Rules of Civil Procedure. This was denied.

The Judge allowed Order of Dismissal in both cases, Appendix "A" and Permanent Injunction, Appendix "E" to protect the counsels, judges and defendants from civil and criminal liabilities. On both of these Orders no legal signature appears. Both of said orders gave protection to attorneys and judges to set aside the provisions of U.S.C. 42, Chapter 21, Sections 1983 and 1985.

The Order of Dismissal issued by Federal Judge Gignoux with approval of U. S. Attorney assistant John J. Cartin, Jr., has caused the Federal Rules of Civil Procedure terms to be changed and also the Provisions of U.S.C. 42, Chapter 21, Sections 1983 and 1985, which became unconstitutional in the stated cases, in direct violation of prescribed statutes and Federal Rules of Civil Procedure.

The appeal was brought under Title 28, U.S.C. Chapter 81, Section 1252. Appendix "F".

Question Presented

1. What Authority Does a U.S. District Court Judge have in setting aside the provisions of U.S.C. 42, Chapter 21, Section 1983, by his allowance the absolute immunity for the defendants mentioned in the litigations?

2. The Federal Summons Provisions says that the de-

fendant is required to serve an answer to the complaint. Can the provisions of Federal Summons be waived?

3. The defendants have filed Motion to Dismiss in Form of Demurrers. Can the abolished demurrers under Rule 7(c) of Federal Rules of Civil Procedure be restored into Federal Practice?

4. Federal Rules of Civil Procedure Rule 54(c) allows Demand for Judgment against defendants being in complete default. Can the terms of this rule be waived?

5. U. S. Civil Service Commission has secured a re-employment rights to Federal Career worker that was laid off. (Appendix "F".) Can these rights be taken away from a citizen that is legally entitled to such rights?

Statutes and Federal Rules of Civil Procedure Involved

The appropriate statutes and Federal Rules of Civil Procedure are set forth in Appendices "B", "C", "D", "F" hereto.

Statement of the Cases

Chester Rudnicki is a citizen of the United States and he was deprived of the equal protection that was secured to him under 14th Amendment to United States Constitution in both said cases.

First Case

The defendants have wrongfully conspired together as to bar the appellant to his rightful recovery in the litigations that was before Federal and State Courts. The defendants have filed illegal pleadings with intent to defraud the appellant. All of the said defendants procured im-

munity by their counsels direct violation of Civil Rights Act, an Amendment to 14th Amendment of U. S. Constitution. All of the said defendants refused to abide by assigned Federal Rules of Civil Procedure. The court has refused to act on appellant Motion for Judgment when it was warranted by U. S. Laws.

SECOND CASE

The defendants have wrongfully denied the appellant his right to re-employment as ex-Federal Career worker that was secured to him under UNITED STATES CIVIL SERVICE COMMISSION CODE. The defendants did not raise any legal objections to the plaintiff's complaint. The facts alleged became as true since no denial was claimed by the defendants.

The Questions Are Substantial

1. As stated in the Civil Rights Act, U.S.C. 42, Chapter 21, Section 1985 which allows an action to be maintained under Conspiracy for Violation of Appellant Civil Rights and Section 1983 for recovery of liabilities against the said defendants. The defendants' claimed no denial and no answer was filed by them, the allegation was taken as true by the court. The Judge Gignoux allowed immunity to all the defendants in both cases disregarding the provisions of Civil right U.S.C. 42, Chapter 21, Sections 1983 and 1985, and 1985 permits an action for conspiracy in violation of Civil Rights and Section 1983 allows for recovery of liabilities which says Every person, who, under color of any statute, etc. and grants no exceptions for immunities from violation of Civil Rights of the appellant.

Note 10, under Section 1983 says that a state official's misuse of power under state law is action taken under

"color of statute" within this section and renders him liable thereunder for resulting deprivation of other's rights under federal constitution regardless of whether state law was violated.

Siegel v. *Ragen*, D.C. Ill., 1949, 88 F. Supp. 996, affirmed 180 F.2d 785, certiorari denied 70 S.Ct. 1015.

The federal summons provisions requires that a defendant shall file his required answer within the 20 days exclusive of the day of service and have no allowance for extension of time for filing late. The Judge Gignoux granted extension of time in violation of Federal Summons provisions and such provisions does not appears in Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure Rule 7(a) says that there must be answer and complaint and no other pleadings shall be allowed. The judge allowed this rule to be violated, none of the defendants have filed their required answers in both cases. The judge has entertained the defendant's motions to dismiss as a substitute for Demurrer in violation of Rule 7(c) of Federal Rules of Civil Procedure abolished Demurrers.

United States Civil Service Commission's Standard Form 50, Rec. July 1957, paragraph 4 section 2 says: if you are a non veteran and you are separated from a career-conditional appointment your eligibility for reinstatement is generally limited to 3 years from the date of separation. The Navy Civilian Personnel Instruction NCPI 310 Cover Sheet 88 2-11 Consideration of Career Employees b, says any former employee on the Reemployment Priority List who feels that there has been violation of his reemployment priority benefits may appeal to the Commission by presenting factual information that he was

improperly denied reemployment as the result of employment of another person. The defendants did not raise any defense to the allegations in the complaint and no answer was filed by the defendants. The judge allowed order of dismissal as to bar the appellant to his right of reemployment that was secured to him under stated U. S. Civil Service Commission Code and under Navy Civilian Personnel Instruction Directives.

Appellant submits that the questions presented are substantial and that it is of such importance that the issue should be resolved by this Court.

Respectfully submitted,

CHESTER RUDNICKI
102 Prospect Street
Somerville 43, Massachusetts
Pro se for Appellant

Appendix A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
C. A. No. 61-897

CHESTER RUDNICKI,
Plaintiff,
v.
WILLIAM A. BROCKETT *et al.*;
Defendants.

C. A. No. 60-916
CHESTER RUDNICKI,
Plaintiff,
v.
GILBERT W. CO., *et al.*,
Defendants.

ORDER OF DISMISSAL

Hearing having been had this date on the motions t
dismiss filed by the defendants in the above-entitled a
tions; and the plaintiff, although duly notified of sai
hearing having failed to appear thereat and all the d
fendants having appeared by counsel; and the Court ha
ing considered the written arguments of the plaintiff an
the written and oral arguments of the defendants; and th
Court being advised,

It is hereby ORDERED, ADJUDGED and DECREED that eac
and all of said motions to dismiss be and they hereby ar
granted, and each and all of said actions be and they her
by are dismissed with prejudice for the following reason

(1) The failure of the Complaint in each action t
state a claim upon which relief could be grante
and

(2) The failure of the Complaint in each action to comply with the requirements of F.R.CIV.P. 8(a) and (e).

Dated at Boston, Massachusetts, this first day of October, 1962.

(s) EDWARD T. GIGNOUX
United States District Judge
Sitting by Designation.

Appendix B

RULE 12(a)

When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him.

Appendix C

FORM 1. FEDERAL SUMMONS

You are hereby summoned and required to serve ....., plaintiff's attorney, whose address is ....., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

.....
Clerk of Court.

Seal of the U. S. District Court.
Dated .....
As amended Dec. 29, 1948, eff. Oct. 20, 1949.

Appendix D

—U.S.C. 42, CHAPTER 21, SECTION 1983.

Every person who, under color of any statute, ordin
regulation, custom or usage, of any state or territory,
jects or causes to be subjected, any citizen of the U.
other person within the jurisdiction thereof to the d
vation of any rights, privileges, or immunities secure
the constitution and laws shall be liable to the part
jured in an action at law, suit in equity, or other p
proceeding for redress.

Appendix E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
C.A. No. 62-169

CHESTER RUDNICKI,
Plaintiff,
v.
EDWARD J. MCCORMACK, JR., *et al.*,
Defendants.

PERMANENT INJUNCTION

Hearing having been had this date upon the Motio
Permanent Injunction filed by certain of the defen
in the above-entitled action; and the plaintiff, alth
duly notified of said hearing, having failed to appear t
at; and the defendants having appeared by counsel
the Court having considered the written arguments
plaintiff and the written and oral arguments of co
for the defendants; and the Court being advised,

It is hereby ORDERED, ADJUDGED and DECREED tha
the purpose of protecting the defendants in said

and other public officials from groundless and vexatious litigation and for the purpose of protecting this and other Courts from the burden of receiving, filing and processing frivolous papers, the plaintiff Chester Radwicki be and he hereby is perpetually enjoined and restrained from continuing, instituting or prosecuting, without prior leave of Court, this or any legal proceedings in any Court against any State or Federal Judge, officer or employee for actions taken in the course of their official duties as such Judge, officer or employee.

Dated at Boston, Massachusetts, this first day of October, 1962.

(s) Edward T. Gignoux
United States District Judge
sitting by designation

3:35 P.M. (E.D.S.T.)

Appendix F

TITLE 28, U.S.C., CHAPTER 81, SECTION 1252.
Direct Appeals from Decisions Invalidating Acts of Congress

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

As amended Oct. 31, 1951, c. 655, section 47, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, section 12(e), (f), 72 Stat. 348; Mar. 18, 1959, Pub.L. 86-3, section 14(a), 73 Stat. 10.